

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILLNo. 849 Session of  
1999

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INTRODUCED BY KENNEY, FARGO, CLARK, WOGAN, MICOZZIE, ORIE,  
HENNESSEY, GODSHALL, HERMAN, ADOLPH, WALKO, PETRARCA,  
LAUGHLIN, JAMES, DeLUCA, SAINATO, PRESTON, WILT, STABACK,  
SAYLOR, GEIST, E. Z. TAYLOR, MAHER, PESCI, TIGUE, HARHAI,  
MELIO, CURRY, COLAFELLA, TRELLO, WILLIAMS, ROONEY, RUBLEY,  
STEELMAN, RAMOS AND EVANS, MARCH 10, 1999

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 15, 1999

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## AN ACT

1 Prohibiting false claims; imposing duties on the Attorney  
2 General and on district attorneys; and providing for  
3 procedures and for penalties.

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28 The General Assembly of the Commonwealth of Pennsylvania  
29 hereby enacts as follows:

30 CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the False Claims Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Claim." Any request or demand for money, property or services made to any employee, officer or agent of the Commonwealth or of any political subdivision thereof or to any contractor, subcontractor, grantee or other recipient of the Commonwealth or any political subdivision thereof, if any portion of the money, property or services requested or demanded issued from, was provided or will be reimbursed by the Commonwealth, referred to as Commonwealth funds, or by any political subdivision thereof, referred to as political subdivision funds.

"False." In addition to its ordinary meaning, this term also means fraudulent.

"Knowing" or "knowingly." A person who, with respect to information, does any of the following:

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud shall not be required.

"Person." Any natural person, corporation, county, political subdivision, firm, association, legal entity, organization,

1 partnership, business or trust.

2 "Political subdivision." Any city, county, tax or assessment  
3 district, municipal or government authority or other legally  
4 authorized local governmental entity in this Commonwealth.

5 "Proceeds." The term includes civil penalties as well as  
6 double or treble damages as provided in Chapter 3.

7 "Prosecuting authority." The Attorney General and where  
8 appropriate the district attorney of any county in which the  
9 political subdivision, including the county itself, lies.

10 Section 103. Construction.

11 This act shall be liberally and broadly construed to  
12 effectuate its purposes. It shall be applied and interpreted to  
13 promote the public interest to eliminate fraud, waste and abuse  
14 through the submission of false or fraudulent claims in this  
15 Commonwealth or in any of its political subdivisions.

16 CHAPTER 3

17 FALSE CLAIMS

18 Section 301. Offenses defined.

19 (a) Liability.--A person who commits any of the following  
20 acts shall be liable to the Commonwealth or to the political  
21 subdivision for three times the amount of damages which the  
22 Commonwealth or the political subdivision sustains because of  
23 the act of that person and shall also be liable to the  
24 Commonwealth or to the political subdivision for the costs of an  
25 action brought to recover any of those penalties or damages and  
26 shall be liable to the Commonwealth or political subdivision for  
27 a civil penalty of not less than \$5,000 nor more than \$10,000  
28 for each false claim:

29 (1) Knowingly presents or causes to be presented to an  
30 officer or employee of the Commonwealth or any political

1 subdivision a false claim for payment or approval.

2 (2) Knowingly makes, uses or causes to be made or used a  
3 false record or statement to get a false claim paid or  
4 approved by the Commonwealth or by any political subdivision.

5 (3) Conspires to defraud the Commonwealth or any  
6 political subdivision by getting a false claim allowed or  
7 paid by the Commonwealth or by any political subdivision.

8 (4) Has possession, custody or control of public  
9 property or money used or to be used by the Commonwealth or  
10 by any political subdivision and knowingly delivers or causes  
11 to be delivered property of lesser quality, quantity or value  
12 than for which the person receives a certificate or receipt.

13 (5) Is authorized to make or deliver a document  
14 certifying receipt of property used or to be used by the  
15 Commonwealth or by any political subdivision and knowingly  
16 makes or delivers a receipt that falsely represents the  
17 quality, quantity or value of the property used or to be  
18 used.

19 (6) Knowingly buys or receives as a pledge of an  
20 obligation or debt public property from any person who  
21 lawfully may not sell or pledge the property.

22 (7) Knowingly makes, uses or causes to be made or used a  
23 false record or statement to conceal, avoid or decrease an  
24 obligation to pay or transmit money or property to the  
25 Commonwealth or any political subdivision.

26 (8) Unknowingly submits a false claim, is a beneficiary  
27 of payment by the Commonwealth or political subdivision for  
28 that claim, subsequently discovers or ~~has reasonable grounds~~ <—  
29 RECKLESSLY FAILS to discover that the claim was false and <—  
30 fails to disclose that the claim was false. Disclosure shall

1 be made to the Commonwealth or political subdivision within a  
2 reasonable time, but in no event longer than 90 days after  
3 discovery of the false claim.

4 (b) Reduced assessment.--Notwithstanding subsection (a), the  
5 court shall assess not less than two times nor more than three  
6 times the amount of damages which the Commonwealth or the  
7 political subdivision sustains because of the act of the person  
8 described in subsection (a)(1), and no civil penalty, if the  
9 ~~court finds all of the following:~~ <—

10 ~~(1) The person committing the violation furnished the~~  
11 ~~prosecuting authority with all information known to that~~  
12 ~~person about the violation within 60 days after the date on~~  
13 ~~which the person first obtained the information.~~

14 ~~(2) The person fully cooperated with any investigation~~  
15 ~~by the prosecuting authority of the violation.~~

16 ~~(3) At the time the person furnished the prosecuting~~  
17 ~~authority with information about the violation, no criminal~~  
18 ~~prosecution, civil action or administrative action had~~  
19 ~~commenced with respect to the violation and the person did~~  
20 ~~not have knowledge or notice of the existence of an~~  
21 ~~investigation into the violation.~~ PERSON CAN DEMONSTRATE <—

22 THAT:

23 (1) THE PERSON COMMITTING THE VIOLATION FURNISHED THE  
24 PROSECUTING AUTHORITY WITH ALL INFORMATION KNOWN TO THAT  
25 PERSON ABOUT THE VIOLATION WITHIN 60 DAYS AFTER THE DATE ON  
26 WHICH THE PERSON FIRST OBTAINED THE INFORMATION;

27 (2) THE PERSON FULLY COOPERATED WITH ANY INVESTIGATION  
28 BY THE PROSECUTING AUTHORITY OF THE VIOLATION; AND

29 (3) (I) AT THE TIME THE PERSON FURNISHED THE APPROPRIATE  
30 PROSECUTING AUTHORITY WITH ALL INFORMATION ABOUT THE

1 VIOLATION, NO CRIMINAL PROSECUTION, CIVIL ACTION OR  
2 ADMINISTRATIVE ACTION HAD COMMENCED WITH RESPECT TO THE  
3 VIOLATION AND THE PERSON DID NOT HAVE KNOWLEDGE OR NOTICE  
4 OF THE EXISTENCE OF AN INVESTIGATION INTO THE VIOLATION;  
5 OR

6 (II) THE PERSON HAD AN EFFECTIVE PROGRAM THAT COULD  
7 REASONABLY BE EXPECTED TO PREVENT AND DETECT VIOLATIONS  
8 OF LAW, EVEN IF THE PROGRAM DID NOT DETECT THE INSTANT  
9 OFFENSE.

10 (c) Joint and several liability.--Liability under this  
11 section shall be joint and several for any act committed by two  
12 or more persons.

13 (d) Limitation.--

14 (1) This section does not apply to any controversy  
15 involving an aggregate amount of less than \$2,500 in value or  
16 ~~to any claims involving~~ WHERE THE CLAIM WAS FILED BY THE <—  
17 INDIVIDUAL RECIPIENT OF benefits or compensation conferred  
18 under the act of June 2, 1915 (P.L.736, No.338), known as the  
19 Workers' Compensation Act, or the act of December 5, 1936  
20 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the  
21 Unemployment Compensation Law, or the act of June 13, 1967  
22 (P.L.31, No.21), known as the Public Welfare Code., ~~except~~ <—  
23 ~~where the claim has not been filed by the individual~~  
24 ~~recipient of benefits.~~

25 (2) As used in this subsection, the term "controversy"  
26 means any one or more false claims submitted or caused to be  
27 submitted by either a person or persons who act pursuant to a  
28 common plan, scheme or design in violation of this act.

29 Section 302. False claims jurisdiction.

30 ~~An action under this act shall be brought in the Commonwealth~~ <—

~~Court if any defendant can be found, resides or transacts  
business in this Commonwealth or if an act proscribed by this  
act occurred within this Commonwealth.~~

(A) GENERAL RULE.--IF ANY DEFENDANT CAN BE FOUND, RESIDES OR  
TRANSACTS BUSINESS IN THIS COMMONWEALTH OR IF AN ACT PROSCRIBED  
BY THIS ACT OCCURRED WITHIN THIS COMMONWEALTH, AN ACTION UNDER  
THIS ACT:

(1) INVOLVING COMMONWEALTH FUNDS OR BOTH COMMONWEALTH  
AND POLITICAL SUBDIVISION FUNDS SHALL BE BROUGHT IN THE  
COMMONWEALTH COURT; OR

(2) INVOLVING EXCLUSIVELY POLITICAL SUBDIVISION FUNDS  
SHALL BE BROUGHT IN EITHER THE COMMONWEALTH COURT OR THE  
COURT OF COMMON PLEAS OF THE COUNTY OF THE POLITICAL  
SUBDIVISION, AT THE ELECTION OF THE DISTRICT ATTORNEY.

(B) ELECTION BY PROSECUTING AUTHORITY.--WHEN AN ACTION IS  
FILED BY A QUI TAM PLAINTIFF PURSUANT TO SECTION 501 AND THE  
PROSECUTING AUTHORITY PROCEEDS WITH THE ACTION PURSUANT TO  
SECTION 502, 503, 504 OR 505, OR INTERVENES IN THE ACTION  
PURSUANT TO SECTION 514, THE PROSECUTING AUTHORITY MAY ELECT TO  
PROCEED IN EITHER THE COMMONWEALTH COURT OR THE COURT OF COMMON  
PLEAS OF THE COUNTY OF THE POLITICAL SUBDIVISION.

Section 303. Procedure.

(a) Commonwealth prosecution.--

(1) The Attorney General shall diligently investigate  
violations under section 301 involving Commonwealth funds. If  
the Attorney General finds that a person has violated or is  
violating section 301, the Attorney General may bring an  
action under this act against that person.

(2) If the Attorney General brings an action under this  
act on a claim involving political subdivision funds as well



1 as Commonwealth funds, the Attorney General shall, on the  
2 same date that the complaint is filed in this action, serve  
3 by mail, return receipt requested, a copy of the complaint on  
4 the appropriate district attorney.

5 (3) The district attorney shall have the right to  
6 intervene in an action brought by the Attorney General under  
7 this act within 90 days after receipt of the complaint  
8 pursuant to paragraph (2).

9 (b) Political subdivision prosecution.--

10 (1) The district attorney shall diligently investigate  
11 violations under section 301 involving political subdivision  
12 funds. If the district attorney finds that a person has  
13 violated or is violating section 301, he may bring an action  
14 under this act against that person.

15 (2) The district attorney may refer a matter involving  
16 political subdivision funds to the Attorney General at any  
17 time. The Attorney General may decline or accept the  
18 referral.

19 (3) If the district attorney brings an action on a claim  
20 involving Commonwealth funds as well as political subdivision  
21 funds, the district attorney shall, on the same date that the  
22 complaint is filed in this action, serve by mail, return  
23 receipt requested, a copy of the complaint on the Attorney  
24 General.

25 (4) Within 90 days after receiving the complaint  
26 pursuant to paragraph (2), the Attorney General shall do one  
27 of the following:

28 (i) Notify the court that the Attorney General  
29 intends to proceed with the action, in which case the  
30 Attorney General shall assume primary responsibility for

conducting the action and the district attorney shall have the right to continue as a party.

(ii) Notify the court that the Attorney General declines to prosecute the action, in which case the district attorney shall have the right to conduct the action on its own.

(iii) Proceed jointly with the district attorney, assuming coequal responsibility for prosecution of the action.

## CHAPTER 5

### QUI TAM ACTIONS

#### Section 501. General provisions.

(a) When action may be brought.--A person may bring a qui tam action for a violation of this act for the person and either for the Commonwealth in the name of the Commonwealth if any Commonwealth funds are involved or for a political subdivision in the name of the political subdivision if political subdivision funds are exclusively involved. A qui tam action may be brought alleging fraud involving both Commonwealth and political subdivision funds. The person bringing the qui tam action shall be referred to as the qui tam plaintiff. Once filed, the qui tam action may be dismissed only by the written consent of the court and the prosecuting authority, taking into account the best interests of the parties involved and the public purposes of this act.

(b) Filing.--A complaint filed by a qui tam plaintiff under this act shall be filed ex parte under seal with the Clerk of the Commonwealth Court or ex parte under seal in the appropriate Federal district court if Federal funds are also involved, and the complaint and all related pleadings shall remain under seal

1 for 90 days from the date of service. No service shall be made  
2 on the defendant until after the complaint is unsealed by order  
3 of the court.

4 (c) Service.--~~Within three days of the~~ <—

5 (1) WITHIN THREE DAYS OF THE complaint being filed <—  
6 pursuant to subsection (b), the qui tam plaintiff shall serve  
7 by mail, return receipt requested, the Attorney General and  
8 the General Counsel with a copy of the complaint and a  
9 written disclosure of substantially all material evidence and  
10 information the qui tam plaintiff possesses at that time.

11 (2) WHERE THE COMPLAINT INVOLVES BOTH COMMONWEALTH AND <—  
12 POLITICAL SUBDIVISION FUNDS, OR EXCLUSIVELY POLITICAL  
13 SUBDIVISION FUNDS, THE PROSECUTING AUTHORITY SHALL SERVE A  
14 COPY OF THE COMPLAINT, RETURN RECEIPT REQUESTED, TO COUNSEL  
15 FOR THE POLITICAL SUBDIVISION.

16 Section 502. Commonwealth funds.

17 Within 90 days after receiving a complaint alleging  
18 violations which involve Commonwealth funds, but not political  
19 subdivision funds, the Attorney General shall do either of the  
20 following:

21 (1) Notify the court that it intends to proceed with the  
22 action and petition the court to have the case unsealed. If  
23 the court grants the Attorney General's request, the seal may  
24 be lifted. The court may, upon motion by the Attorney  
25 General, order a partial unsealing where appropriate.

26 (2) Notify the court that it declines to prosecute the  
27 action, in which case the complaint may be unsealed by the  
28 court within 20 days after written notification is made by  
29 the Attorney General to the qui tam plaintiff and counsel  
30 that the Attorney General does not wish to intervene. Upon

such notification, the qui tam plaintiff shall have the right to conduct the action.

Section 503. Political subdivision funds.

(a) Procedure.--Within 30 days after receiving a complaint alleging violations which exclusively involve political subdivision funds, the Attorney General shall promptly forward the complaint and written disclosure to the appropriate district attorney for review and disposition and shall notify in writing the qui tam plaintiff and counsel of the transfer.

(b) Duty of district attorney.--Within 60 days after the Attorney General forwards the complaint and written disclosure under subsection (a), the district attorney shall do either of the following:

(1) Notify the court that it intends to proceed with the action and petition the court to have the case unsealed. If the court grants the district attorney's request, the seal shall be lifted.

(2) Notify the court that it declines to take over the action, in which case the seal may be lifted within 20 days after such notification has been made and the qui tam plaintiff shall have the right to conduct the action.

Section 504. Complaints relating to Commonwealth and political subdivision funds.

(a) Complaints.--Within 30 days after receiving a complaint alleging violations which involve or allege both Commonwealth and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate district attorney and shall coordinate its review and investigation with those of the district attorney.

(b) Procedure.--Within 90 days after receiving a complaint

alleging violations which involve or allege both Commonwealth and political subdivision funds, the Attorney General shall do one of the following:

(1) Notify the court in writing that the Attorney General intends to proceed with the action, in which case the seal shall be lifted and service effected on the defendant.

(2) Notify the court in writing that the Attorney General declines to take over the action but that the district attorney involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the district attorney.

(3) Notify the court that both the Attorney General and the district attorney decline to take over the action, in which case the seal may be lifted within 20 days after notification has been made and the qui tam plaintiff shall have the right to conduct the action.

Section 505. Intervention by political subdivision.

If the Attorney General proceeds with the action under section 503(b)(1), the district attorney shall be permitted to intervene in the action within 60 days after the Attorney General notifies the court of his intentions.

Section 506. Extension of time.

Upon a showing of good cause and reasonable diligence in his investigation, the prosecuting authority may move the court for reasonable extensions of time during which the complaint will remain under seal. The qui tam plaintiff shall be notified of any extensions requested under this section. Any such motions may be supported by affidavits or other submissions in camera.

Section 507. Other actions prohibited.

When a qui tam plaintiff brings an action under this act, no

1 other person shall be permitted to bring a related action under  
2 this act based on the same or similar facts underlying the  
3 pending action.

4 Section 508. Exclusions.

5 (a) General rule.--No court shall have jurisdiction over an  
6 action brought under this chapter:

7 (1) against an official or employee of the Commonwealth  
8 or a political subdivision if the action is not based on  
9 actual knowledge ~~and bad faith~~ of the official or employee. <—

10 (2) Which relies upon the public disclosure of specific  
11 allegations or transactions in a criminal, civil or  
12 administrative hearing, in a governmental report, hearing,  
13 audit or investigation or from the news media, unless the  
14 action is brought by or intervened in by a prosecuting  
15 authority or the qui tam plaintiff is an original source of  
16 the information.

17 (3) By a prisoner against any official or employee of  
18 the Commonwealth or a political subdivision for acts relating  
19 to the operations and expenditures of a correctional agency  
20 or facility.

21 (4) Based upon allegations or transactions which are the  
22 subject of an investigation, settlement discussion, a  
23 settlement agreement, or any civil or administrative  
24 proceeding, in which the Commonwealth or political  
25 subdivision is already a party.

26 (b) Definition.--As used in this section, the term "original  
27 source" means an individual who has voluntarily provided the  
28 information to the prosecuting authority before filing an action  
29 based on that information and either has direct and independent  
30 knowledge of the information on which the allegations are based

1 or directly or indirectly provided the impetus, basis or  
2 catalyst for the investigation, hearing, audit or report which  
3 led to the public disclosure.

4 Section 509. Employment-related discovery of information.

5 ~~No court shall have jurisdiction over an action brought under~~ <—  
6 ~~this act based upon information discovered by a present or~~  
7 ~~former employee of the Commonwealth or a political subdivision~~  
8 ~~during the course of his employment unless that employee first~~  
9 ~~in good faith attempts to use existing internal procedures for~~  
10 ~~reporting and seeking recovery of the falsely claimed sums~~  
11 ~~through official channels and unless the Commonwealth or~~  
12 ~~political subdivision failed to act on the information provided~~  
13 ~~within a reasonable period of time. A reasonable period of time~~  
14 ~~shall mean no longer than six months after information has been~~  
15 ~~disclosed.~~

16 NO COURT SHALL HAVE JURISDICTION OVER AN ACTION BROUGHT UNDER <—  
17 THIS ACT BY ANY PRESENT OR FORMER:

18 (1) EMPLOYEE OF THE COMMONWEALTH OR POLITICAL  
19 SUBDIVISION;

20 (2) INVESTIGATOR, AUDITOR OR INSPECTOR NOT EMPLOYED BY  
21 THE COMMONWEALTH OR POLITICAL SUBDIVISION BUT WHO IS  
22 OTHERWISE CONTRACTED OR ENGAGED TO REVIEW ANY ACTIONS TAKEN  
23 BY THE COMMONWEALTH OR THE POLITICAL SUBDIVISIONS; OR

24 (3) INVESTIGATOR, AUDITOR OR INSPECTOR EMPLOYED,  
25 CONTRACTED OR OTHERWISE ENGAGED BY THE PERSON SUBMITTING THE  
26 FALSE CLAIM;

27 BASED UPON INFORMATION DISCOVERED DURING THE COURSE OF HIS  
28 EMPLOYMENT UNLESS THAT EMPLOYEE, INVESTIGATOR, AUDITOR OR  
29 INSPECTOR FIRST IN GOOD FAITH ATTEMPTS TO USE EXISTING INTERNAL  
30 PROCEDURES FOR REPORTING, AUDITING AND SEEKING RECOVERY OF THE

1 FALSELY CLAIMED FUNDS THROUGH OFFICIAL CHANNELS AND UNLESS THE  
2 COMMONWEALTH, THE POLITICAL SUBDIVISION OR THE PERSON SUBMITTING  
3 THE FALSE CLAIM, AS APPROPRIATE, FAILED TO ACT ON THE  
4 INFORMATION WITHIN A REASONABLE PERIOD OF TIME.

5 Section 510. Responsibility for prosecution.

6 If the prosecuting authority proceeds with the action, it  
7 shall have the primary responsibility for prosecuting the  
8 action. The qui tam plaintiff shall have the right to continue  
9 with all rights and obligations as a full party to the action.

10 Section 511. Dismissal of action.

11 The Commonwealth or political subdivision may seek to dismiss  
12 the action for good cause notwithstanding the objections of the  
13 qui tam plaintiff if the qui tam plaintiff has been notified by  
14 the prosecuting authority of the filing of the motion and the  
15 court has provided the qui tam plaintiff with an adequate  
16 opportunity to oppose the motion.

17 Section 512. Settlement.

18 (A) GENERAL RULE.--The prosecuting authority may settle the  
19 action with the defendant notwithstanding the objections of the  
20 qui tam plaintiff if the court determines that the proposed  
21 settlement is fair, adequate and reasonable under all of the  
22 circumstances to all parties involved.

<—

23 (B) CONSULTATION WITH POLITICAL SUBDIVISION.--THE DISTRICT  
24 ATTORNEY SHALL CONSULT WITH THE POLITICAL SUBDIVISION REGARDING  
25 ANY PROPOSED SETTLEMENT.

<—

26 Section 513. Election not to proceed.

27 If the prosecuting authority elects not to proceed, the qui  
28 tam plaintiff shall have the right to conduct the action. If the  
29 prosecuting authority so requests, it shall be served with  
30 copies of all pleadings filed in the action and supplied with



1 copies of all deposition transcripts.

2 Section 514. Intervention.

3 Upon timely application, the court may permit the prosecuting  
4 authority to intervene in an action with which it had initially  
5 declined to proceed if the interest of the Commonwealth or  
6 political subdivision in recovery of the property or funds  
7 involved is not being adequately represented by the qui tam  
8 plaintiff.

9 Section 515. Proceeds.

10 (a) Attorney General.--If the Attorney General initiates an  
11 action under section 303(a) or assumes control of an action  
12 initiated by the district attorney pursuant to section  
13 303(b)(4)(ii), the Attorney General shall receive a fixed 33% of  
14 the proceeds of the action or settlement of the claim, which  
15 funds shall be used to support and expand its ongoing  
16 investigation and prosecution of false claims violations in this  
17 Commonwealth or to support other investigation and prosecution  
18 efforts.

19 (b) District attorney.--If a district attorney initiates and  
20 conducts an action pursuant to section 303(b), the office of the  
21 district attorney shall receive a fixed 33% of the proceeds of  
22 the action or settlement of the claim, which funds shall be used  
23 to support and expand its ongoing investigation and prosecution  
24 of false claims violations within its jurisdiction or to support  
25 other investigation and prosecution efforts.

26 (c) Award of portion of recovery.--If a district attorney  
27 intervenes in an action initiated by the Attorney General  
28 pursuant to section 303(a)(3) or remains a party to an action  
29 assumed by the Attorney General pursuant to section 303(b)(4)(i)  
30 and (iii), the court may award the office of the district

1 attorney a portion of the Attorney General's fixed 33% of the  
2 recovery under subsection (a), taking into account the district  
3 attorney's role in investigating and conducting the action and  
4 the resources of the office expended on the prosecution.

5 (d) Qui tam recovery.--

6 (1) If the prosecuting authority proceeds with an action  
7 brought by a qui tam plaintiff under this act, the qui tam  
8 plaintiff shall, subject to subsections ~~(f) and (g)~~ (G) AND <—  
9 (H), receive not less than 20% nor more than 33% of the full  
10 proceeds of the action or settlement of the claim, depending  
11 upon the extent to which the qui tam plaintiff substantially  
12 contributed to the overall prosecution of the action. If the  
13 prosecuting authority and the qui tam plaintiff cannot reach  
14 an agreement concerning the percentage of proceeds to be  
15 distributed to the qui tam plaintiff, the determination shall  
16 be made by the court.

17 (2) When it conducts the action, the Attorney General or  
18 the district attorney shall receive a fixed 33% of the  
19 proceeds of the action or settlement of the claim, which  
20 funds shall be used to support and expand its ongoing  
21 investigation and prosecution of false claims made against  
22 the Commonwealth or political subdivision or otherwise to  
23 investigate or prosecute consistent with the duties of these  
24 offices.

25 (3) When both the Attorney General and the district  
26 attorney are involved as coparties in a qui tam action  
27 pursuant to section 504, the court in its discretion may  
28 award the district attorney a portion of the Attorney  
29 General's fixed 33% of the recovery, taking into account the  
30 district attorney's cooperation and contribution to

1 investigating and conducting the action.

2 (e) Decline to proceed.--If the prosecuting authority  
3 declines to proceed with an action, the qui tam plaintiff shall,  
4 subject to subsections ~~(f) and (g)~~ (G) AND (H), receive an <—  
5 amount which the court decides is reasonable for collecting the  
6 civil penalty and damages on behalf of the Commonwealth or  
7 political subdivision. The amount awarded by the court shall be  
8 not less than 30% nor more than 50% of the proceeds of the  
9 action or settlement and shall be paid out of the proceeds.

10 (F) ALLOCATION OF PROCEEDS FOR COSTS OF ANNUAL AUDIT.--THE <—  
11 CONTROLLER, BOARD OF AUDITORS OR OTHER GOVERNMENT AUDITOR  
12 PERFORMING THE ANNUAL AUDIT OF RECOVERIES AS PROVIDED UNDER  
13 SUBSECTION (K) SHALL RECEIVE A FIXED 1% OF THE PROCEEDS OF THE  
14 ACTION OR SETTLEMENT OF THE CLAIM, WHICH FUNDS SHALL BE USED TO  
15 DEFRAY THE COSTS OF THE ANNUAL AUDIT.

16 ~~(f)~~ (G) Present or former employee.--If a qui tam action is <—  
17 brought by a present or former employee of the Commonwealth or  
18 political subdivision, the qui tam plaintiff shall not be  
19 entitled to any minimum guaranteed recovery from the proceeds.  
20 If the prosecuting authority and the qui tam plaintiff cannot  
21 reach an agreement concerning the percentage of proceeds to be  
22 distributed to the qui tam plaintiff, the determination shall be  
23 made by the court. The court may award the qui tam plaintiff  
24 those sums from the proceeds as it considers appropriate, but in  
25 no case more than 33% of the proceeds if the prosecuting  
26 authority goes forth with the action or 50% if it declines to go  
27 forth, taking into account the significance of the information,  
28 the role of the qui tam plaintiff in advancing the case to  
29 litigation and the scope of and response to the qui tam  
30 plaintiff's attempts to report and gain recovery of the falsely

1 claimed funds through official channels.

2 ~~(g)~~ (H) Fraudulent activity.--

<—

3 (1) Where the action is one which the court finds to be  
4 based primarily on information from a qui tam plaintiff who  
5 actively participated in the fraudulent activity, the qui tam  
6 plaintiff shall not be entitled to any minimum guaranteed  
7 recovery from the proceeds. If the prosecuting authority and  
8 the qui tam plaintiff cannot reach an agreement concerning  
9 the percentage of proceeds to be distributed to the qui tam  
10 plaintiff, the determination shall be made by the court. The  
11 court, in its sole discretion after a full review of all the  
12 facts and circumstances, may award the qui tam plaintiff such  
13 sums from the proceeds as it considers appropriate under the  
14 circumstances, but in no case more than 33% of the proceeds  
15 if the prosecuting authority goes forth with the action or  
16 50% if it declines to go forth, taking into account the  
17 significance of the information, the role of the qui tam  
18 plaintiff in advancing the case to litigation, the scope of  
19 the qui tam plaintiff's involvement in the fraudulent  
20 activity, the qui tam plaintiff's attempts to avoid or resist  
21 such activity and all other circumstances surrounding the  
22 activity.

23 (2) A person who has been convicted of a crime, either  
24 in the same or another jurisdiction, based on participation  
25 in the fraudulent activity at issue in the action under this  
26 act shall under no circumstances be permitted to participate  
27 in any action under this act as a qui tam plaintiff.

28 ~~(h) Present or former sworn law enforcement officer or other~~  
29 ~~governmental investigator. Any present or former sworn law~~  
30 ~~enforcement officer or other governmental investigator who~~

<—

~~obtains information regarding a false claim in the course of  
that officer's or investigator's official duties shall be  
precluded from participating in the proceeds of a qui tam action  
on the basis of that information.~~

~~(i) Use of recoveries. Proceeds recovered under this act by  
the prosecuting authority shall be placed in the operating fund  
of the Commonwealth, the county of the district attorney, or  
both, as appropriate. The Commonwealth, the county of the  
district attorney, or both, as appropriate, shall immediately  
release from the operating fund, without restriction, a like  
amount for the use of the prosecuting authority for the purposes  
elsewhere specified in this act. The entity having budgetary  
control shall not anticipate future recoveries in adoption and  
approval of the budget for the prosecuting authority.~~

(I) PRESENT OR FORMER INVESTIGATORS.--NOTWITHSTANDING ANY  
OTHER PROVISION OF THIS ACT, ANY PRESENT OR FORMER SWORN LAW  
ENFORCEMENT OFFICER, CITY CONTROLLER, OTHER GOVERNMENT  
INVESTIGATOR, AUDITOR OR INSPECTOR GENERAL OR OTHER AUDITOR OR  
INVESTIGATOR OF A PERSON, WHO OBTAINS INFORMATION REGARDING A  
FALSE CLAIM IN THE COURSE OF HIS DUTIES, WHETHER OR NOT AS AN  
EMPLOYEE OR A CONTRACTOR, SHALL BE PRECLUDED FROM PARTICIPATING  
IN THE PROCEEDS OF A QUI TAM ACTION ON THE BASIS OF THAT  
INFORMATION UNLESS THAT OFFICER, CITY CONTROLLER, GOVERNMENT  
INVESTIGATOR, AUDITOR OR INSPECTOR GENERAL OR OTHER AUDITOR OR  
INVESTIGATOR HAS PRESENTED SUCH INFORMATION TO THE PERSON AND  
THE PERSON FAILS TO TAKE APPROPRIATE ACTION WITHIN A REASONABLE  
TIME.

(J) USE OF RECOVERIES.--

(1) PROCEEDS RECOVERED UNDER THIS ACT BY THE PROSECUTING  
AUTHORITY OR AWARDED TO THE GOVERNMENT AUDITOR PURSUANT TO

1 SUBSECTION (F) SHALL BE PLACED IN THE GENERAL FUND OF THE  
2 COMMONWEALTH, THE OPERATING FUND OF THE COUNTY OF THE  
3 DISTRICT ATTORNEY OR THE OPERATING FUND OF THE COUNTY OF THE  
4 GOVERNMENT AUDITOR, AS APPROPRIATE.

5 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE  
6 CONTRARY, THE COMMONWEALTH, COUNTY OF THE DISTRICT ATTORNEY  
7 OR THE COUNTY OF THE GOVERNMENT AUDITOR, AS APPROPRIATE,  
8 SHALL IMMEDIATELY MAKE SUCH FUNDS AVAILABLE FOR EXPENDITURE,  
9 WITHOUT RESTRICTION, BY THE PROSECUTING AUTHORITY OR  
10 GOVERNMENT AUDITOR FOR THE PURPOSES SPECIFIED ELSEWHERE IN  
11 THIS ACT. THE ENTITY HAVING BUDGETARY CONTROL OVER SUCH FUNDS  
12 MAY NOT ANTICIPATE FUTURE RECOVERIES IN THE ADOPTION OR  
13 APPROVAL OF THE BUDGET FOR THE PROSECUTING AUTHORITY.

14 ~~(j)~~ (K) Annual audit of recoveries.--It shall be the <—  
15 responsibility of the Commonwealth, the county of the district  
16 attorney, or both, as appropriate, to provide, through the  
17 controller, board of auditors or other appropriate auditor, an  
18 annual audit of all recoveries under this act. The audit shall  
19 ~~not be made public but~~ BE MADE PUBLIC, SUBJECT TO THE RIGHT OF <—  
20 THE PROSECUTING AUTHORITY TO REDACT PORTIONS OF THE AUDIT WHICH  
21 IT REASONABLY BELIEVES WILL COMPROMISE INVESTIGATIONS OR  
22 CRIMINAL PROCEEDINGS, AND shall be submitted to the Attorney  
23 General's office by September 30 of each year.

24 ~~(k)~~ (L) Annual report.--The Attorney General shall annually <—  
25 submit a report to the Appropriations Committee and the  
26 Judiciary Committee of the Senate and the Appropriations  
27 Committee and Judiciary Committee of the House of  
28 Representatives, specifying the recoveries obtained under this  
29 act. The report shall give an accounting of all moneys recovered  
30 through the sale of any property seized in satisfaction of any

1 judgment arising from an action under this act.

2 ~~(1)~~ (M) Recoveries and appropriations.--Recoveries or future <—  
3 recoveries under this act shall be in addition to any  
4 appropriation made to the office of the prosecuting authority.

5 Section 516. Reversion to General Fund.

6 (a) General rule.--The portion of the proceeds not  
7 distributed under section 515 shall revert to the General Fund  
8 when the underlying false claims involved Commonwealth funds  
9 exclusively and to the political subdivision when the underlying  
10 false claims involved political subdivision funds exclusively.  
11 When petitioned to do so, the court shall make an apportionment  
12 of the recovered proceeds between the Commonwealth and political  
13 subdivision based on their relative share of the funds falsely  
14 claimed.

15 (b) Reimbursement.--When an insurer, guarantor or surety has  
16 suffered a loss on an underlying false claim through either: <—

17 (1) reimbursing the Commonwealth or political  
18 subdivision; or

19 (2) directly paying a claimant;

20 ~~it shall be reimbursed for both. When the reversion to the~~ <—  
21 ~~General Fund is inadequate to compensate the Commonwealth or~~  
22 ~~political subdivision for damages sustained and the insurer,~~  
23 ~~guarantor or surety for all moneys reimbursed to the~~  
24 ~~Commonwealth or political subdivision or directly paid to a~~  
25 ~~claimant as a result of those damages, the uninsured losses of~~  
26 ~~the commonwealth or political subdivision shall be paid first~~  
27 ~~and the insurer, guarantor or surety shall recover its~~  
28 ~~reimbursement and direct payments to claimants before further~~  
29 ~~distribution is made under this act. AND~~ <—

30 (3) WHEN THE PROCEEDS REVERTING TO THE OPERATING FUND

1 UNDER THIS SECTION EXCEED ANY UNINSURED LOSS TO THE  
2 COMMONWEALTH OR THE POLITICAL SUBDIVISION;  
3 THE INSURER, GUARANTOR OR SURETY SHALL BE REIMBURSED FOR ITS  
4 LOSS BEFORE FURTHER DISTRIBUTION IS MADE UNDER THIS ACT.

5 Section 517. Expenses.

6 If the Commonwealth, political subdivision or qui tam  
7 plaintiff prevails in or settles any action under this act, the  
8 qui tam plaintiff shall receive an amount for all reasonable  
9 expenses incurred in the prosecution of the claim, including  
10 expert witness fees plus reasonable litigation costs and  
11 attorney fees. All expenses, costs and attorney fees shall be  
12 awarded against the defendant, and under no circumstances shall  
13 they be the responsibility of the prosecuting authority.

## 14 CHAPTER 7

### 15 GENERAL PROVISIONS

16 Section 701. Rules of civil procedure.

17 Except where this act provides otherwise, actions under this  
18 act shall be governed by the Pennsylvania Rules of Civil  
19 Procedure.

20 Section 702. Stay of discovery.

21 (a) General rule.--The court may stay discovery for a period  
22 of not more than 90 days if the prosecuting authority or the  
23 General Counsel shows that discovery would interfere with an  
24 investigation or a prosecution of a criminal or civil matter  
25 arising out of the same or similar facts, regardless of whether  
26 the prosecuting authority proceeds with the action. Such a  
27 showing shall be conducted in camera. The court may extend the  
28 90-day period upon a further showing in camera that the  
29 prosecuting authority or the General Counsel has pursued the  
30 criminal or civil investigation or proceedings with reasonable



1 diligence and that any proposed discovery in the action under  
2 this act would interfere with the ongoing criminal or civil  
3 investigation or proceedings.

4 (b) Criminal action.--When a criminal action has commenced  
5 based upon the same or similar facts underlying the pending  
6 action under this act, discovery by the defendant in the pending  
7 action under this act shall be confined to that available to a  
8 criminal defendant under the Rules of Criminal Procedure and the  
9 United States and the Constitution of the Commonwealth of  
10 Pennsylvania. The defendant in the pending action under this act  
11 may petition the court for a stay of proceedings pending the  
12 conclusion of the criminal action.

13 Section 703. Limitations on participation.

14 Upon a showing by the prosecuting authority by a  
15 preponderance of the evidence that unrestricted participation  
16 during the course of the litigation by the person initiating the  
17 action would interfere with or unduly delay the prosecuting  
18 authority's prosecution of the case or would be repetitious,  
19 irrelevant or for purposes of harassment, the court may, in its  
20 discretion, impose limitations on the person's participation,  
21 including, but not limited to, the following:

22 (1) limiting the number of witnesses the person may  
23 call;

24 (2) limiting the length of the testimony of these  
25 witnesses;

26 (3) limiting the person's cross-examination of  
27 witnesses; or

28 (4) otherwise limiting the participation by the person  
29 in the litigation.

30 Section 704. Employee protection.

1 (a) Disclosing information.--No employer shall solicit,  
2 attempt or conspire to prevent, make, adopt or enforce any rule,  
3 regulation or policy preventing an employee from disclosing  
4 information to a Federal, State or local law enforcement agency  
5 or from acting in furtherance of the investigation of,  
6 initiation of, testimony in or assistance in filing an action  
7 under this act.

8 (b) Discrimination.--No employer shall discharge, demote,  
9 suspend, threaten, harass, deny promotion to or in any other  
10 manner discriminate, or solicit, attempt or conspire to  
11 discriminate against an employee in the terms of and conditions  
12 of employment because of lawful acts done by the employee on  
13 behalf of the employee or others in disclosing information to a  
14 Federal, State or local government or law enforcement agency or  
15 in furthering false claims action, including investigation for,  
16 initiation of, testimony for or assistance in an action filed or  
17 to be filed under this act.

18 ~~(c) Penalty.--An employer who violates subsection (a) or (b)~~ <—

19 (C) GOOD FAITH REPORTING TO EMPLOYER.--NO EMPLOYER MAY <—  
20 DISCHARGE, THREATEN OR OTHERWISE DISCRIMINATE OR RETALIATE  
21 AGAINST AN EMPLOYEE REGARDING THE EMPLOYEE'S COMPENSATION,  
22 TERMS, CONDITIONS, LOCATION OR PRIVILEGES OF EMPLOYMENT BECAUSE  
23 THE EMPLOYEE MADE OR IS ABOUT TO MAKE A GOOD FAITH REPORT TO THE  
24 EMPLOYER REGARDING A FALSE CLAIM UNDER THIS ACT, REGARDLESS OF  
25 WHETHER THE REPORT IS MADE OR TO BE MADE ORALLY OR IN WRITING.

26 (D) PENALTY.--AN EMPLOYER WHO VIOLATES SUBSECTION (A), (B)  
27 OR (C) shall be liable for all relief necessary to make the  
28 employee whole, including reinstatement with the same seniority  
29 status that the employee would have had but for the  
30 discrimination, three times the amount of back pay, prevailing

1 interest on the back pay, compensation for any special damage  
2 sustained as a result of the discrimination and, where  
3 appropriate, punitive damages. EXCEPT IN CASES ALLEGING <—  
4 INTENTIONAL MISCONDUCT, PUNITIVE DAMAGES AGAINST A PERSON SHALL  
5 NOT EXCEED 200% OF THE COMPENSATORY DAMAGES AWARDED. In  
6 addition, the employer shall be required to pay all litigation  
7 costs and reasonable attorney fees. An employee may bring an  
8 action in the Commonwealth Court for the relief provided in this  
9 subsection.

10 ~~(d)~~ (E) Limitations.--An employee who is discharged, <—  
11 demoted, suspended, harassed, denied promotion, threatened with  
12 termination or in any other manner discriminated against in the  
13 terms and conditions of employment by his employer because of  
14 participation in conduct which directly or indirectly resulted  
15 in a false claim being submitted to the Commonwealth or a  
16 political subdivision shall be entitled to the remedies under  
17 subsection ~~(e)~~ (D) if the employee voluntarily discloses <—  
18 information to a Federal, State or local government or law  
19 enforcement agency or acted in furtherance of a false claims  
20 action, including investigation for, initiation of, testimony  
21 for or assistance in an action filed or to be filed.

22 Section 705. Limitations.

23 (a) Time of filing.--An action under this act may not be  
24 filed more than six years after the date on which the violation  
25 of this act is completed or more than three years after the date  
26 of discovery by the prosecuting authority, but in any event no  
27 more than ten years after the date on which the violation of  
28 section 301 is completed.

29 (b) Prior acts.--An action under this act may be brought  
30 regarding false claims made prior to the effective date of this

1 act if the limitations period set forth in subsection (a) has  
2 not elapsed.

3 (c) Proof.--In any action brought under this act, the  
4 Commonwealth, the political subdivision or the qui tam plaintiff  
5 shall be required to prove all essential elements of the cause  
6 of action, including damages, by a preponderance of the  
7 evidence.

8 (d) Estoppel.--Notwithstanding any other provision of law, a  
9 guilty verdict, guilty plea or nolo contendere plea rendered in  
10 a criminal proceeding which alleged a scheme to obtain funds  
11 fraudulently from the Commonwealth or a political subdivision  
12 shall estop the defendant from denying the essential elements of  
13 the offense in any action which involves the same transaction as  
14 in the criminal proceeding and which is brought under this act.

15 Section 706. Remedies.

16 (a) Civil remedies.--

17 (1) The Commonwealth Court shall have jurisdiction to  
18 prevent and restrain violations of section 301 by issuing  
19 appropriate orders, including, but not limited to:

20 (i) Ordering any person to divest himself of any  
21 interest, direct or indirect, in any business or entity;  
22 imposing reasonable restrictions on the future activities  
23 or investments of any person, including, but not limited  
24 to, prohibiting any person from engaging in the same type  
25 of endeavor or freezing the person's assets.

26 (ii) Making due provisions for the rights of  
27 innocent persons, ordering the dissolution of any  
28 business or entity, ordering the denial, suspension or  
29 revocation of charters of domestic corporations,  
30 certificates of authority authorizing foreign

1 corporations to do business in this Commonwealth,  
2 licenses, permits or prior approval granted to any  
3 business or entity by any department or agency of the  
4 Commonwealth or any of its political subdivisions; or  
5 prohibiting any business or entity from engaging in any  
6 business.

7 (2) Injunctions against false claims:

8 (i) If a person violates or is about to violate this  
9 act, the prosecuting authority may commence an action in  
10 Commonwealth Court to enjoin such violation.

11 (ii) If a person alienates or disposes of property,  
12 or intends to alienate or dispose of property obtained as  
13 a result of a violation of this act or property which is  
14 traceable to such violation, the prosecuting authority  
15 may commence an action in Commonwealth Court to enjoin  
16 such alienation or disposition of property, or for a  
17 restraining order to prohibit any person from  
18 withdrawing, transferring, removing, dissipating or  
19 disposing of any such property or property of equivalent  
20 value and appoint a temporary receiver to administer such  
21 restraining order.

22 (3) In any proceeding under this section, the court  
23 shall proceed as soon as practicable to the hearing and  
24 determination thereof. Pending final determination, the court  
25 may enter preliminary or special injunctions or take such  
26 other actions, including the acceptance of satisfactory  
27 performance bonds, as it may deem proper.

28 (b) Remedies cumulative.--The provisions of this act are not  
29 exclusive, and the remedies provided for in this act shall be in  
30 addition to any other remedies provided for in any other law or

1 available under common law.

2 Section 707. Enforcement.

3 (a) Prosecuting authority.--The prosecuting authority shall  
4 have the power and duty to enforce this act, including the  
5 authority to issue civil investigative demands pursuant to this  
6 act, to institute proceedings under this act and to take such  
7 actions as may be necessary to ascertain and investigate alleged  
8 violations of this act. The prosecuting authority may delegate  
9 its powers to investigate and prosecute actions under this act  
10 to appropriate Deputy Attorneys General or deputy or assistant  
11 district attorneys.

12 (b) Construction.--Nothing contained in this act shall be  
13 construed to limit the regulatory or investigative authority of  
14 any department or agency of the Commonwealth or political  
15 subdivision whose functions might relate to persons, enterprises  
16 or matters falling within the scope of this act.

17 Section 708. Civil investigative demand.

18 (a) General rule.--Whenever the prosecuting authority has  
19 reason to believe that any person may be in possession, custody  
20 or control of any documentary material or information relevant  
21 to a false claim investigation, the prosecuting authority may  
22 issue in writing and cause to be served upon the person a civil  
23 investigative demand requiring such person to:

24 (1) produce such documentary material for inspection and  
25 copying;

26 (2) answer in written interrogatories with respect to  
27 such documentary material or information;

28 (3) give oral testimony concerning such documentary  
29 material or information; or

30 (4) furnish any combination of such material, answers

1 and testimony.

2 (b) Content.--Each demand under this section shall:

3 (1) State the nature of the conduct constituting the  
4 alleged false claim violation which is under investigation  
5 and the provision of law applicable thereto.

6 (2) If the demand is for the production of documentary  
7 material:

8 (i) describe the class or classes of documentary  
9 material to be produced thereunder with such definiteness  
10 and certainty as to permit the material to be fairly  
11 identified;

12 (ii) state that the demand is returnable forthwith  
13 or prescribe a return date which will provide a  
14 reasonable period of time within which the material so  
15 demanded may be assembled and made available for  
16 inspection and copying or reproduction; and

17 (iii) identify an investigator to whom the material  
18 shall be made available.

19 (3) If the demand is for written interrogatories:

20 (i) set forth with specificity the written  
21 interrogatories to be answered;

22 (ii) prescribe dates at which time answers to  
23 written interrogatories shall be submitted; and

24 (iii) identify the investigator to whom such answers  
25 shall be submitted.

26 (4) If such demand is for the giving of oral testimony:

27 (i) prescribe a date, time and place at which oral  
28 testimony should be commenced;

29 (ii) identify the investigator who shall conduct the  
30 examination and the person to whom the transcript of such

1 investigation shall be submitted;

2 (iii) specify that such attendance and testimony are  
3 necessary to the conduct of the investigation; and

4 (iv) describe the general purpose for which the  
5 demand is being issued and the general nature of the  
6 testimony, including the primary areas of inquiry, which  
7 will be taken pursuant to the demand.

8 (5) Contain the following statement printed  
9 conspicuously at the top of the demand:

10 You have the right to seek the assistance of any  
11 attorney, and he may represent you in all phases of  
12 the false claim investigation of which this civil  
13 investigative demand is a part.

14 (c) Limitation.--No demand under this section shall:

15 (1) contain any requirement which would be held to be  
16 unreasonable if contained in a subpoena duces tecum issued by  
17 any court in connection with a grand jury investigation of  
18 the alleged fraud violation; or

19 (2) require the production of any documentary evidence  
20 which would be privileged from disclosure if demanded by a  
21 subpoena duces tecum issued by any court in connection with a  
22 grand jury investigation of the alleged false claim  
23 violation.

24 (d) Service.--Service of any demand or any petition filed  
25 under this section shall be made in the manner prescribed by the  
26 Pennsylvania Rules of Civil Procedure for service of writs and  
27 complaints unless otherwise agreed to by the prosecuting  
28 authority and the person.

29 (e) Return.--A verified return by the individual serving any  
30 demand or petition under this section setting forth the manner



1 of service shall be prima facie proof of such service. In the  
2 case of service by registered or certified mail, the return  
3 shall be accompanied by the return post office receipt of  
4 delivery of the demand.

5 (f) Procedure.--

6 (1) A person upon whom a demand issued under this  
7 section has been duly served shall make the demanded material  
8 available for inspection and copying or reproduction to an  
9 investigator designated in the demand at the principal place  
10 of business of the person or at such other place as the  
11 investigator and the person thereafter may agree or as the  
12 court may direct pursuant to this section on the return date  
13 specified in the demand. The person may, upon agreement of  
14 the investigator, substitute copies of all or any part of the  
15 demanded material for the originals of the demanded material.

16 (2) The investigator to whom any documentary material is  
17 so delivered shall take physical possession of the material  
18 and shall be responsible for the use made of the material and  
19 for its return pursuant to this section. The investigator may  
20 cause the preparation of the copies of the documentary  
21 material as may be required for official use. While in the  
22 possession of the investigator, no material so produced shall  
23 be available for examination by any individual other than the  
24 prosecuting authority or any investigator without the consent  
25 of the person who produced the material. Under such  
26 reasonable terms and conditions as the prosecuting authority  
27 shall prescribe, documentary material while in the possession  
28 of the investigator shall be available for examination by the  
29 person who produced the material or any duly authorized  
30 representatives of that person.

1           (3) The production of documentary material in response  
2 to a civil investigative demand served under this section  
3 shall be made under a sworn certificate, in such form as the  
4 demand designates, by:

5           (i) in the case of a natural person, the person to  
6 whom the demand is directed; or

7           (ii) in the case of a person other than a natural  
8 person, a person having knowledge of the facts and  
9 circumstances relating to such production and authorized  
10 to act on behalf of such person.

11 The certificate shall state that all of the documentary  
12 material required by the demand and in the possession,  
13 custody or control of the person to whom the demand is  
14 directed has been produced and made available to the  
15 investigator identified in the demand.

16           (4) Each interrogatory in a civil demand served under  
17 this section shall be answered separately and fully in  
18 writing under oath and shall be submitted under a sworn  
19 certificate, in such form as the demand designates, by:

20           (i) in the case of a natural person, the person to  
21 whom the demand is directed; or

22           (ii) in the case of a person other than a natural  
23 person, a person or persons responsible for answering  
24 each interrogatory. ~~If any interrogatory is objected to,~~ <—

25           (5) IF ANY INTERROGATORY IS OBJECTED TO, the reasons for <—  
26 the objection shall be stated in the certificate instead of  
27 an answer. The certificate shall state that all information  
28 required by the demand and in the possession, custody,  
29 control or knowledge of the person to whom the demand is  
30 directed has been submitted. To the extent that any

1 information is not furnished, the information shall be  
2 identified and reasons set forth with particularity regarding  
3 the reasons why the information was not furnished.

4 ~~(5)~~ (6) (i) The examination of any person pursuant to <—  
5 a civil investigative demand for oral testimony served  
6 under this section shall be deemed an "official  
7 proceeding" within the meaning of 18 Pa.C.S. § 4902(a)  
8 (relating to perjury). The examination shall be taken  
9 before an officer authorized to administer oaths and  
10 affirmations by the laws of this Commonwealth. The  
11 officer before whom the testimony is to be taken shall  
12 put the witness on oath or affirmation and shall,  
13 personally or by someone acting under the direction of  
14 the officer and in the officer's presence, record the  
15 testimony of the witness. The testimony shall be taken  
16 accurately and shall be transcribed. When the testimony  
17 is fully transcribed, a copy of the transcript shall be  
18 promptly forwarded to the designated person. This  
19 subsection shall not preclude the taking of testimony by  
20 any means authorized by, and in a manner consistent with,  
21 the Pennsylvania Rules of Civil Procedure.

22 (ii) The investigator conducting the examination  
23 shall exclude from the place where the examination is  
24 held all persons except the person giving the testimony,  
25 the attorney for and any other representative of the  
26 person giving the testimony, the prosecuting authority,  
27 any person who may be agreed upon by the prosecuting  
28 authority and the person giving the testimony, and any  
29 stenographer taking such testimony.

30 (iii) The oral testimony of any person taken

1       pursuant to a civil investigative demand served under  
2       this section shall be taken in the county where the  
3       office of the investigator conducting the examination is  
4       situated, or in such other place as may be agreed upon by  
5       the investigator and such person.

6           (iv) When the testimony is fully transcribed, the  
7       investigator shall afford the witness, who may be  
8       accompanied by counsel, a reasonable opportunity to  
9       examine and read the transcript, unless such examination  
10      and reading are waived by the witness. Any changes in  
11      form or substance which the witness desires to make shall  
12      be entered and identified upon the transcript by the  
13      officer or the investigator, with a statement of the  
14      reasons given by the witness for making such changes. The  
15      transcript shall then be signed by the witness, unless  
16      the witness in writing waives the signing, is ill, cannot  
17      be found or refuses to sign. If the transcript is not  
18      signed by the witness within 30 days after being afforded  
19      a reasonable opportunity to examine it, the officer or  
20      the investigator shall sign it and state on the record  
21      the fact of the waiver, illness, absence of the witness  
22      or the refusal to sign, together with the reasons, if  
23      any, given therefor.

24           (v) Upon payment of reasonable charges therefor, the  
25      investigator shall furnish a copy of the transcript to  
26      the witness only, except that the prosecuting authority  
27      may, for good cause, limit such witness to inspection of  
28      the official transcript of the witness' testimony.

29           (vi) Any person compelled to appear for oral  
30      testimony under a civil investigative demand may be

1 accompanied, represented and advised by counsel. Counsel  
2 may advise the person, in confidence, with respect to any  
3 question asked of that person. The person or counsel may  
4 object on the record to any question, in whole or in  
5 part, and shall briefly state for the record the reason  
6 for the objection. An objection may be made, received and  
7 entered upon the record when it is claimed that such  
8 person is entitled to refuse to answer the question on  
9 the grounds of any constitutional or other legal right or  
10 privilege, including the privilege against self-  
11 incrimination. The person may not otherwise object to or  
12 refuse to answer any question, and may not directly or  
13 through counsel otherwise interrupt the oral examination.  
14 If the person refuses to answer any question, a petition  
15 may be filed in the Commonwealth Court under section  
16 708(g) for an order compelling the person to answer the  
17 question.

18 ~~(6)~~ (7) Upon completion of:

<—

19 (i) the false claims investigation for which any  
20 documentary material was produced under this section; and

21 (ii) any case or proceeding arising from such  
22 investigation;

23 the investigator shall return to the person who produced the  
24 material all of the material other than copies of the  
25 material made pursuant to this section which have not passed  
26 into the control of any court or grand jury through  
27 introduction into the record of such case or proceeding.

28 ~~(7)~~ (8) When documentary material has been produced by a  
29 person under this section for use in a false claims  
30 investigation and no case or proceeding arising from the

<—

1 investigation has been instituted within a reasonable time  
2 after completion of the examination and analysis of all  
3 evidence assembled in the course of the investigation, the  
4 person shall be entitled, upon written demand made upon the  
5 prosecuting authority, to the return of all documentary  
6 material, other than copies of the material made pursuant to  
7 this section, so produced by that person.

8 (g) Failure to comply.--Whenever a person fails to comply  
9 with a civil investigative demand that is served upon him under  
10 this section or whenever satisfactory copying or reproduction of  
11 any of the material cannot be done and the person refuses to  
12 surrender the material, the prosecuting authority may file in  
13 the Commonwealth Court and serve upon the person a petition for  
14 an order of the court for the enforcement of this section.

15 (h) Petition for relief.--

16 (1) Within 20 days after the service of any demand under  
17 this section upon any person or at any time before the return  
18 date specified in the demand, whichever period is shorter,  
19 the person may file in the Commonwealth Court and serve upon  
20 the prosecuting authority a petition for an order of the  
21 court modifying or setting aside this demand. The time  
22 allowed for compliance with the demand, in whole or in part,  
23 as deemed proper and ordered by the court shall not run  
24 during the pendency of the petition in the court. The  
25 petition shall specify each ground upon which the petitioner  
26 relies in seeking the relief and may be based on any failure  
27 of the demand to comply with the provisions of this section  
28 or on any constitutional or other legal right or privilege of  
29 the person.

30 (2) At any time during which the prosecuting authority

1 is in custody or control of documentary material delivered by  
2 a person in compliance with a demand under this section, the  
3 person may file in the Commonwealth Court and serve upon the  
4 prosecuting authority a petition for an order of the court  
5 requiring the performance of any duty imposed by this  
6 section.

7 (3) Whenever a petition is filed in the Commonwealth  
8 Court, the court shall have jurisdiction to hear and  
9 determine the matter so presented and, after a hearing at  
10 which all parties are represented, to enter such order or  
11 orders as may be required to carry into effect the provisions  
12 of this section.

13 (i) Definition.--As used in this section, the term  
14 "documentary material" includes, but is not limited to, any  
15 book, paper, record, recording, tape, report, memorandum, data,  
16 written or electronic communication or other document relating  
17 to the business affairs of any person, enterprise or matter  
18 falling within the purview of this act.

19 Section 709. Immunity.

20 Whenever any individual refuses on the basis of his privilege  
21 against self-incrimination to comply with a civil investigative  
22 demand issued pursuant to this act or to testify or produce  
23 other information in a proceeding under this act, the  
24 prosecuting authority may invoke the provisions of 42 Pa.C.S. §  
25 5947 (relating to immunity of witnesses).

26 Section 710. Regulations.

27 (a) General rule.--The Attorney General shall have the power  
28 and authority to promulgate rules and regulations which may be  
29 necessary to carry out the purposes set forth in this act.

30 (b) Guidelines.--In order to facilitate the speedy

1 implementation of this act, the Attorney General shall have the  
2 power and authority to promulgate, adopt and use guidelines  
3 which shall be published in the Pennsylvania Bulletin. The  
4 guidelines shall not be subject to review pursuant to section  
5 205 of the act of July 31, 1968 (P.L.769, No.240), referred to  
6 as the Commonwealth Documents Law, sections 204(b) and 301(10)  
7 of the act of October 15, 1980 (P.L.950, No.164), known as the  
8 Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633,  
9 No.181), known as the Regulatory Review Act, and shall be  
10 effective for a period of not more than two years from the  
11 effective date of this act. After the expiration of the two-year  
12 period, the guidelines shall expire and be replaced by  
13 regulations which shall be promulgated, adopted and published as  
14 provided by law.

15 Section 711. Effective date.

16 This act shall take effect in 60 days.